



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/161593

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner timely requested an appeal of a medical prior authorization of personal care hours.

Following the hearing the record was left open for Petitioner to submit a letter from her Occupational Therapist. Petitioner never submitted this letter.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By Letter: Kelly Townsend, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. Petitioner is paraplegic. She also suffers from chronic pain, spinal cord injury, diabetes, and is obese. Petitioner lives with her son.
2. On August 1, 2014 Petitioner's provider, Community Home Health Care submitted a medical prior authorization for 21 hours per week of Personal Care Worker (PCW) services plus 24 hours per year of as needed personal care PRN services. These services are for acute care needs and to accompany Petitioner to medical appointments as needed.
3. The Department approved 14.5 hours per week of PCW services. This is 58 units of PCW services as each unit is 15 minutes of service. The Department allowed for 210 minutes per week for bathing, 140 minutes per week for dressing, 70 minutes per week for grooming, 280 minutes per week for toileting assistance, and 175 minutes for services incidental to activities of daily living. The Department notes that the additional 175 minutes for incidental services represents one quarter of the total PCW time allowed for Petitioner's activities of daily living. The Department did not allow for PCW time for mobility or transferring. The Department noted that Petitioner had recently received a power chair, and was deemed independent in operating that chair. They also noted that documentation supports that she can transfer herself. They denied the as needed PRN services because the physician did not order this additional as needed time.
4. On September 5, 2014 the Department sent Petitioner notice of the modification of her prior authorization request. The first page of the notice stats in bold that the appeal due date is October 20, 2014. The second page also informs Petitioner that she has 45 days to appeal. The third page states in bold and capital letters, REMEMBER, and then again explains Petitioner's 45 day appeal deadline. Petitioner remembers receiving this notice, but could not remember the specific date she received it.
5. On October 29, 2014 the Division of Hearings and Appeals received Petitioner's appeal. The date next to Petitioner's signature is October 25, 2014. Her envelope is post-marked October 27, 2014.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. Petitioner's appeal was filed **54** days after the date of the action. I further note that the notice in this case was very explicative in explaining her appeal deadline. The notice began with the appeal deadline of October 20, 2014 in bold. The notice went on to explain and highlight the 45 day appeal deadline on each page. Petitioner testified credibly that she received this notice. Petitioner testified that she did not remember when she received the notice, however, the notice was sent to Petitioner's address on September 5, 2014. Thus, it is safe to assume that Petitioner would have received the notice around that time period. For those reasons, Petitioner's appeal is not timely and I do not have jurisdiction to address this case on the merits.

I note that even if I had jurisdiction to address this case on the merits, it appears that the Departments' modification was correct. The record was left open for Petitioner to submit a letter from her Occupational therapist. Petitioner did not submit that letter. Petitioner stated that the letter said that she needed 4 to 6 hours per day of PCW time. Petitioner may have been mistaken, and perhaps that is why she failed to send in the letter following the hearing. However, even if the OT feels that Petitioner needs that amount of PCW time, the OT did not complete the personal care screening tool. In addition, the OT would not be aware of what is a Medicaid covered PCW service.

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (September 2014). In determining whether to approve such a service request, DHS employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.*

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(2)(b). It is important to note that for a person who is not living alone, no more than a quarter amount of the total PCW time can be spent for housekeeping activities. §DHS 107.112(e). Housekeeping activities include laundry, dishes, meal preparation, and food shopping. *Id.*

In this case the Department allotted sufficient time for bathing, dressing, grooming, toileting, and services incidental to daily living. Petitioner testified that she needed assistance pushing her chair. Petitioner did not testify that she had recently received a new power chair. The documentation supports that she received a new power chair, and thus, the Department correctly did not allow additional time for the PCW to push Petitioner's manual chair. Petitioner also indicated that she needed additional time for toileting. She stated that she has had some incontinence issues related to her disability. She had an appointment set up to see her doctor to address this issue. This appears to be a new issue. If this is a new issue creates a

need for additional PCW services, Petitioner's provider may submit a new request for additional PCW services.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

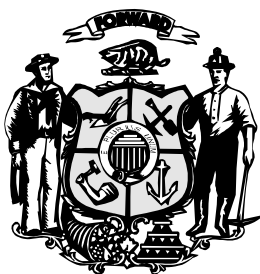
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

...

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of December, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 5, 2014.

Division of Health Care Access and Accountability